

residual, low-level contamination on-site. Based upon these results, Canonie prepared the remedial design (RD) plans and specifications. As part of the RD, calculations were performed, based on a 100-year storm event, that determined that the erosive forces due to the overland flow velocities would be minimal, and that rip-rap protection on the slopes to the wetland (called for the ROD) would not be required. EPA approved the RD in June 1991.

The Settling Defendants awarded a contract to Severson Environmental Services, Inc. to implement the remedy in July 1991. During the course of regrading the areas to be covered with clean soil, it was discovered that an above-grade mound of soil contained parts of four drums. Further, while regrading the slope to the wetland, parts of three other buried drums were uncovered. The drum parts and the surrounding soil were excavated and were subsequently disposed of at an EPA-approved hazardous waste facility. The results of analyses of the soil in the areas where the drum parts were discovered indicated that the contaminants and their concentrations were comparable to those found during the RI and, therefore, the remedy selected in the ROD remained appropriate.

In May 1992, a representative of NYSDEC, during an inspection of the site, observed three seeps located at the foot of the west slope to the wetlands. After an analysis of the seeps and the soil surrounding the seeps, it was concluded that the seeps were caused by the discharge of groundwater at the wetland margin. The results of the analyses of the seeps indicated low concentrations of PCBs. Since the samples were not filtered prior to analysis, the PCBs were believed to be a result of PCBs adsorbed to sediment suspended in the liquid while collecting the samples (this premise has been confirmed, in that no PCBs have been identified in five rounds of ground water testing.) The results of the analyses of the soil associated with these seeps indicated contaminant concentrations that are consistent with those detected during the RI. Considering these results, EPA directed the Settling Defendants to continue with the implementation of the remedy. The installation of the soil cap and revegetation was completed in September 1992.

Following EPA's approval of the Settling Defendants' operation and maintenance and long-term monitoring plan, a Superfund Site Close-Out Report was approved on December 29, 1993.

During the first post-RA inspection/monitoring in April 1994, a small area of black, odorous soil was observed on the western portion of the soil cover. Three buried drums that were subsequently discovered in this area were excavated and overpacked. A geophysical investigation, performed to determine whether other buried drums were present in this area, followed by the installation of two trenches in areas of concern, revealed one crushed drum, metallic debris, and some stained soil. The drum, debris, and soil were excavated and, along with the overpacked drums mentioned above, were disposed of at approved disposal facilities.

Summary of Operation and Maintenance and Five-Year Review Requirements

Since the remedy involved the installation of a soil cover, there are no operational requirements.

The Settling Defendants are to monitor the site for five years, commencing with the first inspection/monitoring event that occurred on April 26, 1994.

The long-term monitoring program consists of monitoring the groundwater, soil, and Ox Creek sediments and surface water quarterly the first year, semi-annually the second year, and annually thereafter.

Site inspections, which will be conducted quarterly for the first year and semi-annually thereafter, are to be coincident with the monitoring events. Additional inspections will be conducted after any major flooding (100-year) or rainfall events in the Ox Creek area. The inspections will include visual observations of the soil cover, erosion controls and silt fencing, groundwater monitoring wells, site security, and general site conditions. Maintenance, if required, will consist of correcting observed deficiencies (e.g., restoring the soil cover and its vegetation to its original condition, repair of fencing, etc.) The six groundwater monitoring wells (four located within the limits of the soil cover, one just adjacent to it, and one up-gradient) that comprise the groundwater monitoring program will be inspected to ensure their integrity. They will be repaired should they become damaged, or replaced should they become non-functional.

So that EPA can evaluate the remedy's effectiveness, following each inspection/sampling event, the Settling Defendants are to submit to EPA a monitoring and inspection program report, summarizing the inspection and sampling results, and describing any

corrective maintenance actions that were taken. In addition, a review of the long-term monitoring and inspection program reports will be performed five years after the initiation of the RA to assure that the remedy remains effective in protecting human health and the environment.

Summary of How the Deletion Criteria Has Been Met

Based upon the results of RA sample analyses, survey results, and site inspections, the site meets the requirements set forth in the ROD, in that a one-foot clean-soil cover has been installed over those residually-contaminated locations at which concentrations above 1 ppm PCBs and 0.33 ppm CPAHs were detected, the site has been regraded and revegetated to prevent soil erosion and to minimize surface water runoff, and institutional controls (an easement) have been put into place to prevent the utilization of the underlying groundwater and the future development of the site for residential use.

EPA and the State have determined that the response actions undertaken at the Clothier Disposal site are protective of human health and the environment.

In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. EPA, in consultation with the State, has determined that all appropriate responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Having met the deletion criteria, EPA proposes to delete the Clothier Disposal site from the NPL.

Dated: August 21, 1995.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 95-22488 Filed 9-14-95; 8:45 am]

BILLING CODE 6460-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3170

[ES-930-05-1310-01-241A]

RIN 1004-AC27

Coalbed Methane

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new part to the oil and gas leasing regulations. This regulation is intended to encourage the production of coalbed

methane in States where production has been impeded by conflicts in ownership. These regulations are a requirement of section 1339 of the Energy Policy Act of 1992, Ownership of Coalbed Methane.

DATES: Comments should be submitted by November 14, 1995. Comments received or postmarked after the above date may not be considered in the decision making process on the final rule.

ADDRESSES: Comments should be sent to: Director (120), Bureau of Land Management, Room 5558, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments can also be sent to internet!WO140@attmail.com. Please include "attn: AC27" and your name and address in your internet message. Comments will be available for review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David R. Stewart, Bureau of Land Management, Eastern States at (703) 440-1728.

SUPPLEMENTARY INFORMATION: This proposed rule is intended to implement section 1339 of the Energy Policy Act of 1992 (hereinafter "the Act"), Ownership of Coalbed Methane (Pub. L. 102-486 Section 1339; 106 Stat. 2986; 42 U.S.C. 13368). The Act requires promulgation of regulations by October 24, 1995 to carry out the requirements of the Act. This rule is needed to promote the orderly development of coalbed methane by removing the impediment that conflicting ownership poses to the development of that resource in affected States. The legislative history of the Energy Policy Act indicates that Congress intended Section 1339 to apply to all lands within affected States, and not just Federal lands. See H.R. Rep. 102-474(I) at 147-48 and 214-16 (*reprinted in* 1992 U.S. Code Cong. & Admin. News at 1954); Cong. Rec., Feb. 6, 1992 at E 232 (Remark of Rep. Rahall that predecessor bill to section 1339 was offered "with the hopes that the entire Appalachian region will experience the benefits of coalbed methane development." (see also 58 FR 21589).

This regulation essentially force-pools conflicting owners of coalbed methane. It does this by requiring conflicting owners to enter into the development of a drilling unit. The regulation provides that any proceeds from a well, where there is a conflict in ownership, will be placed in an escrow account until the ownership issue is resolved by a State entity of competent jurisdiction. The mechanism of forced pooling, coupled

with the escrow account requirements, is intended to remove the impediment that conflicts in ownership of coalbed methane poses to development.

These regulations will affect the development of coalbed methane in five States (Illinois, Indiana, Kentucky, Pennsylvania, and Tennessee). The list of affected States was originally published in the **Federal Register** on April 22, 1993 (58 FR 21589). West Virginia and Ohio were on the original list of affected States but have complied with the requirements of the Act and therefore have been removed from the list. West Virginia was removed from the list of affected States because it implemented a State program that promoted the production of coalbed methane gas within the State. Ohio was removed from the list of affected States as a result of a resolution passed by both houses of the Ohio Legislature requesting removal from the list. West Virginia was removed from the list of affected States on December 8, 1994, (59 FR 63376), and Ohio was removed from the list of affected States on February 8, 1995 (60 FR 7576).

The principal author of this rule is David R. Stewart of the Bureau of Land Management (BLM), Eastern States, assisted by Ian Senio of the Regulatory Management Team of BLM. The staff, Fuels Resources Management Division, U.S. Department of Energy, Morgantown Energy Technology Center, also assisted BLM in drafting this proposed rule. BLM interprets Section 1339 of the Act as giving it the primary responsibility for making day-to-day decisions necessary to carry out the regulations, while also requiring it to consult with and consider the view of the Department of Energy regarding the administration of this program.

We have determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not meet any of the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusion" means a category of actions that do not individually or cumulatively have a

significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. This rule will not have a significant economic effect on the coalbed methane industry. The rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal communities. The rule applies to five States not all of which have substantial quantities of economically recoverable coalbed methane. Furthermore, BLM anticipates that several more States will qualify for removal from the list of affected States, further diminishing the already minor economic impact of these regulations.

The regulations regarding the location and spacing of wells will have little or no economic impact as all of the States on the list of affected States already utilize some method of spacing for gas wells. The regulations pertaining to pooling of interests are reasonable and reflect standard, good management practices for gas wells and will have little economic impact. The section of the regulations that deals with the establishment of an escrow account in cases where it is not clear who owns the coalbed methane gas will also have little economic impact. The escrow account will hold the funds from producing wells while the ownership of the coalbed methane is being determined.

There will be little or no cost increase imposed on the coalbed methane industry and therefore there will be no substantial effects on government agencies or competition. Further, for the same reasons, the Department has determined that under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the rule will not have a significant economic impact on a substantial number of small entities. The rule does not distinguish between entities based on their size.

The BLM has determined that this regulation is not significant under the Unfunded Mandates Reform Act of 1995 since it will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. This regulation will not significantly or uniquely affect small governments.

The Department certifies that this proposed rule does not represent a

government action capable of interference with constitutionally protected property rights. There will be no private property rights impaired as a result of this rule. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

The Regulatory Management Team of BLM wrote these regulations in plain English. We used plain English in an attempt to effectively communicate the information and legal requirements of these regulations. In addition to comments on the substance and content of these regulations, please comment on the use of plain English in these regulations.

List of Subjects for 43 CFR Part 3170

Public lands—Mineral resources, Reporting and record keeping requirements, Coalbed methane.

For the reasons set out in the preamble, part 3170, Group 3100, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is added to read as follows:

PART 3170—COALBED METHANE

General Provisions

Sec.

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- 3170.0-7 Applicability of these regulations.

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- 3172.4-4 How will the funds from the escrow account be allocated?

Getting Authorization To Drill and Stimulate Coalbed Methane Wells

- 3172.5-1 After the pooling order is issued may I begin to drill and stimulate the coalbed methane well(s)?
- 3172.5-2 What must I include when applying for authorization to drill a coalbed methane well or stimulate a coal seam?
- 3172.5-3 What if I can't get signed consent from a party identified in § 3172.5-2(c)(2)?

Notice and Objection

- 3172.6-1 As the unit operator whom must I notify before I drill a coalbed methane well?
- 3172.6-2 How do I prove that I notified all appropriate parties?
- 3172.6-3 If I am notified of the application to drill a coalbed methane well, may I object to the drilling of the well?
- 3172.6-4 What must I include in my objections to the application to drill a coalbed methane well?
- 3172.6-5 Under what circumstances may BLM refuse to approve the drilling of a well?
- 3172.6-6 Under what circumstances is BLM required to deny approval for the drilling of a well?
- 3172.6-7 If my application to drill a well is unacceptable because a notified party objects, may I modify my proposal to mitigate the objection?

Hearing and Decision on Objections to Drilling and Stimulation of Coalbed Methane Wells

- 3172.7-1 If I have been notified of the proposal to drill or stimulate a coalbed methane well and I object, am I entitled to a formal hearing?
- 3172.7-2 May parties other than notified parties participate in these proceedings?

- 3172.7-3 How will I find out about the informal hearing on objections to the drilling and stimulation of the well?
- 3172.7-4 What if BLM decides not to have a hearing on objections to the drilling and stimulation of the well?
- 3172.7-5 When does BLM decide on my request for approval to drill and stimulate the coal seam?
- 3172.7-6 Do I need only BLM's approval to start operations?

Plugging of Coalbed Methane Wells

- 3172.8-1 When must I plug a coalbed methane well?

Venting for Safety

- 3172.9 May I vent coalbed methane for safety reasons?

Appeals

- 3172.10 What if I have been adversely affected by a decision made by BLM under these regulations?

Authority: 42 U.S.C. 1336; 43 U.S.C. 174.0.

General Provisions

§ 3170.0-1 Purpose of these regulations.

The regulations in this part govern operations associated with the development of coalbed methane in those States listed as affected States. They seek to promote the orderly and efficient development of coalbed methane and preserve the ability to mine coal seams in the affected States.

§ 3170.0-3 Authority for these regulations

Section 1339 of the Energy Policy Act of October 24, 1992 (106 Stat. 2776, 2986; 42 U.S.C. 13368).

§ 3170.0-5 Definitions.

(a) *Affected State* means a State listed by the Secretary of the Interior, with the participation of the Secretary of Energy, as published in the **Federal Register** on April 22, 1993, 58 FR 21589 (1993), and as subsequently amended.

(b) *Coalbed methane* means natural gas that is produced, or may be produced, from coalbeds and rock strata associated with the coalbed.

(c) *Coal operator* means any person who has the right to operate or does operate a coal mine.

(d) *Coal owner* means any person who owns or leases a coal seam.

(e) *Coal seam* means any layer of coal 20 inches or more in thickness. The term also applies to a stratum of less thickness that is being commercially worked, or in the Bureau of Land Management's judgment can foreseeably be commercially worked and will require protection if wells are being drilled through it.

(f) *Nonparticipating working-interest owner* means a coalbed methane owner who relinquishes his working interest in a well to participating working-interest

owners until the proceeds allocable to his share equal 300 percent of his share of the costs of drilling and equipping the well. Afterwards, the nonparticipating working-interest owner becomes a participating working-interest owner. Here, proceeds equal gross revenue less operating costs.

(g) *Participating working-interest owner* means a coalbed methane owner who elects to share the risks and costs of drilling, completing, equipping, gathering, operating (including any and all disposal costs), plugging, and abandoning a well(s) under a pooling order and to receive a share of the well's production.

(h) *Pooling* means joining of interests for common development within an approved spacing unit.

(i) *Spacing unit* means an area that may contain one or more coalbed methane wells for the purpose of orderly development of coalbed methane.

(j) *Stimulate* means any action taken to increase the inherent productivity of a coalbed methane well such as hydraulic fracturing.

(k) *Unit operator* means the party designated in a pooling order to develop a spacing unit by the drilling of one or more coalbed methane wells.

(l) *Vent* means release of coalbed methane into the atmosphere.

§ 3170.0-7 Applicability of these regulations.

The regulations apply to any deposit of coal capable of producing coalbed methane in an affected State and are in addition to State permitting requirements for individual wells. These regulations don't apply to coalbed methane development where there is a voluntary agreement between all ownership interests.

States Affected by These Regulations

§ 3171.1 Which States are affected States?

The five affected States are Pennsylvania, Kentucky, Tennessee, Indiana, and Illinois. Excluded by statute from any extension or revision of the list of affected States are the States of Colorado, Montana, New Mexico, Wyoming, Utah, Virginia, Washington, Mississippi, Louisiana, and Alabama.

§ 3171.2-1 How does BLM add a State to the list of affected States?

BLM may add to the list of affected States when BLM determines that all three of the following conditions apply—

(a) Development of significant deposits of coalbed methane is being impeded by disputes, uncertainty or

litigation regarding ownership of coalbed methane;

(b) No statutory or regulatory procedure or existing case law permits and encourages the development of coalbed methane within that State; and

(c) No extensive development of coalbed methane exists within that State, but the potential for coalbed methane development exists.

§ 3171.2-2 How does BLM remove a State from the list of affected States?

BLM will remove a State from the list of affected States when any of the following events occurs:

(a) The Governor of the State petitions the Secretary of the Interior for removal, and the State's legislature doesn't object. The Governor first must notify the legislature of the petition during a legislative session and allow six months for consideration. If, in that time, the legislature enacts no law or resolution disapproving the petition, the Governor may petition the Secretary to delete the State from the list of affected States. The petition must include a copy of the Governor's notice to the State legislature and a statement that the legislature hasn't disapproved removal of the State from the list of affected States;

(b) The State's legislature passes a law or resolution requesting removal from the list of affected States. A representative of the legislature must send BLM a copy of the law or resolution; or

(c) BLM determines that the State no longer meets all of the criteria for an affected State listed in § 3171.2-1.

How To Establish a Spacing Unit

§ 3172.1 What distance requirements apply to a spacing unit?

If the State has distance requirements for coalbed methane wells those distance requirements apply. Otherwise, a coalbed methane well must be both—

(a) 1,000 feet or more from any other coalbed methane well; and

(b) 200 feet or more from the boundary of the spacing unit.

Coalbed methane wells in the gob will be spaced by BLM on an individual basis. Gob means an area in an underground mine where mining activity has occurred that may be packed with waste rock and in which there is a reasonable likelihood of buildup of coalbed methane. Exceptions to paragraphs (a) and (b) of this section require BLM's prior approval.

§ 3172.2-1 Who may apply for a spacing unit?

You may file an application to establish spacing units for drilling and operating coalbed methane wells if you

claim a coalbed methane ownership interest within a proposed spacing unit.

§ 3172.2-2 What must my application for a spacing unit contain?

You must file with BLM an original and two copies of an application to establish or modify spacing. In it—

(a) Give your name and address and those of any counsel or representative;

(b) If you are applying to vacate or amend an order, identify the order you want vacated or amended and state the relief you seek;

(c) Justify the size and shape of the proposed spacing unit based on geologic characteristics of the subject coalbed(s) and the engineering and economic characteristics of well(s) within the unit;

(d) Give a legal description of the area to be spaced relative to a known survey point and the total acreage to be included in the order;

(e) Give a map depicting the boundary of the area to be spaced;

(f) List the names and addresses of each owner of the surface estate, and any oil, gas, coal or other mineral interest underlying the land which is the subject of your request; and

(g) Certify by affidavit that you used due diligence to locate and serve notice of the request for spacing to each of the owners identified under § 3172.2-2(f).

§ 3172.2-3 What must be in my notice to interest owners required by § 3172.2-2(g)?

Your notice must—

(a) Briefly describe the proposed action;

(b) Give the address of the BLM office where your application is filed;

(c) Invite interest owners to send written comments to that BLM office within 30 calendar days of receiving your notice; and

(d) Give a general-location map of the area.

§ 3172.2-4 As a notified interest owner under § 3172.2-2(f) how do I object to the spacing?

Provide BLM with written objections within 30 calendar days of your notification.

§ 3172.2-5 What does BLM consider when reviewing my application for spacing?

(a) Besides the information you submitted in your application for spacing, BLM considers—

(1) Proposed mine development plans;

(2) Existing mine operations;

(3) Drilling of multiple coalbed

methane wells on each spacing unit;

(4) Existing spacing laws or orders; and

(5) Objections received under

§ 3172.2-4.

(b) If you don't send enough information for BLM to determine spacing unit size or shape, BLM may enter a temporary order establishing provisional spacing units for the orderly development of the area. The provisional spacing stays in effect until BLM receives the information it needs to determine the ultimate spacing for the wells.

§ 3172.2-6 How does BLM tell me that the spacing unit has been approved?

After reviewing your application for spacing, BLM issues a spacing order that establishes the following:

- (a) The size and shape of the spacing units;
- (b) The formations to which the order applies;
- (c) The acreage included in the order; and
- (d) Well locations on each unit.

BLM will send you and any parties that request it, a copy of the spacing order.

How To Get a Pooling Order

§ 3172.3-1 What is a pooling order?

The pooling order is an order that joins conflicting interests in one or more spacing units and spreads their costs and revenues.

§ 3172.3-2 Is a pooling order required if there is a voluntary agreement between ownership interests in the coalbed methane?

No pooling order is required if the parties claiming an ownership interest in the coalbed methane voluntarily agreed to drill and operate the well.

§ 3172.3-3 Who may apply for a pooling order?

You may apply for a pooling order if you are claiming a coalbed methane ownership interest and are proposing to drill a coalbed methane well.

§ 3172.3-4 What must my application for a pooling order contain?

You must file an original and two copies of your application. In it—

- (a) Give your name and address and those of any counsel or representative;
- (b) If you are applying to vacate or amend an order, identify the order you want vacated or amended and state the relief you seek. If you are seeking to amend an order, you may reference information already on file with BLM and don't need to send it again;
- (c) Justify the proposed action which may include citing statutes, rules, orders, and decided cases;
- (d) Give a legal description of the area to be pooled;
- (e) Include a map that shows the proposed pooling unit boundary and the boundaries of individual tracts of

ownership in the unit, certified by a registered land surveyor or engineer;

- (f) For each tract in the unit, give—
 - (1) The acreage and its percentage to the total acreage of the pooling area;
 - (2) The names, addresses and ownership percentages for all owners of the surface, coal, oil and gas. If any owner's name and address is unknown, say so;
 - (g) Describe the coalbed methane ownership interests to be pooled;
 - (h) Give your percentage of the total interest in the proposed unit;
 - (i) Describe the conflicting claims to ownership of the coalbed methane;
 - (j) Give the percentages of coalbed methane ownership interests to be escrowed and a plan for escrowing the costs of drilling and operating the well(s) and the proceeds from the well(s).
 - (k) Describe the geology of any coalbeds and adjacent strata from which coalbed methane is to be produced;
 - (l) Describe the proposed development, including at least—
 - (1) The number, location, and depths of proposed wells (with maps as appropriate);
 - (2) The anticipated drilling schedule;
 - (3) A description of production measurement and allocation; and
 - (4) Any other unique aspect of the operation;
 - (m) Estimate production over the life of well(s) and the total reserves of the unit;
 - (n) Estimate the allocable costs, providing sufficient detail of the types of direct and indirect costs; and
 - (o) Certify by affidavit that you used due diligence to locate and identify all interest owners.

§ 3172.3-5 Will there be a hearing on my application for pooling?

Yes. BLM holds a hearing 45 calendar days or more after receiving an application for pooling.

§ 3172.3-6 How will I know about the pooling order hearing?

BLM provides notice of the hearing by certified mail (return receipt requested) or makes a reasonable and diligent effort to provide notice to each party claiming an ownership interest in the coalbed methane within the proposed pooling area. The notice—

- (a) Will describe the purpose of the hearing;
- (b) Invites each party to submit written objections;
- (c) Invites each party to appear before BLM at the pooling hearing; and
- (d) States the anticipated date, time, and place of the hearing.

§ 3172.3-7 What will the pooling order establish?

After reviewing your application for pooling and holding the hearing BLM issues a pooling order which, among other things, establishes—

- (a) The boundary of the order;
- (b) The coalbed methane ownership interests and formations to be pooled;
- (c) The unit operator;
- (d) Escrow provisions as provided in 3172.4; and
- (e) Election options.

§ 3172.3-8 What options do I have in participating in the pooling order?

After BLM issues the pooling order, if you are an owner or claim ownership of the coalbed methane, you must choose a participation option. You must give written notice of your election to BLM and the designated unit operator within 30 calendar days after the effective date of the pooling order. The participation options are—

- (a) You elect to sell or lease your coalbed methane ownership interest to the unit operator at a royalty rate determined by BLM in the pooling order;
- (b) You elect to become a participating working-interest owner; or
- (c) You elect to become a nonparticipating working-interest owner.

§ 3172.3-9 What if I make no election?

No election means you have agreed to lease your coalbed methane interest to the unit operator under the terms and conditions in the pooling order. The pooling order must clearly state that this is what no election means.

Escrow Accounts

§ 3172.4-1 What is the purpose of the escrow account BLM establishes?

BLM establishes an escrow account to maintain custody of the costs and proceeds for the interests described in the pooling order. The costs for administering the escrow account come out of the funds deposited as proceeds in the escrow account. The escrow account will be established at a federally insured bank.

§ 3172.4-2 What funds must I deposit into the escrow account?

- (a) If you are a participating working-interest owner but not the unit operator, you must deposit into the escrow account your share of drilling, equipping, and abandonment costs, as set out in the pooling order;
- (b) If you are the unit operator, you must deposit into the escrow account all royalties attributable to the conflicting interests of the lessees plus all proceeds

that exceed ongoing operational expenses (including reasonable overhead costs) attributable to conflicting working interests.

§ 3172.4-3 When will I receive my share of the funds paid into the escrow account?

BLM orders payment of principal and accrued interest from the escrow account within 30 calendar days in one of two ways:

(a) To all legally entitled parties after BLM receives notification of the final legal determination of entitlement. Notification consists of certified copies of the order issued by a court or other body of competent legal jurisdiction.

(b) To all parties who claim an ownership in the coalbed methane when they voluntarily agree on the ownership of the coalbed methane. You must send BLM a copy of the voluntary agreement. This agreement must consist of a notarized writing, signed by all parties claiming an interest in the coalbed methane, which at a minimum clarifies ownership interests in the coalbed methane.

§ 3172.4-4 How will the funds from the escrow account be allocated?

You must give BLM either a certified copy of the order issued by a court or other body of competent legal jurisdiction or a copy of the agreement between parties claiming ownership in the coalbed methane. Then—

(a) If you are a legally entitled participating working-interest owner, you receive a proportionate share of the proceeds attributable to your conflicting ownership interest;

(b) If you are a legally entitled nonparticipating working-interest owner, you receive a proportionate share of the proceeds attributable to your conflicting ownership interest, less your proportionate share of 300 percent of the cost of drilling, equipping and abandoning the well;

(c) If you lease (or are considered to have leased under § 3172.3-9) your coalbed methane ownership interest to the unit operator, you receive a share of the royalty proceeds attributable to the conflicting interests of lessees, as set out in the pooling order; or

(d) If you are the unit operator, you receive the costs each legally entitled participating working-interest owner contributed to the escrow account.

Getting Authorization To Drill and Stimulate Coalbed Methane Wells

§ 3172.5-1 After the pooling order is issued may I begin to drill and stimulate the coalbed methane well(s)?

No. You must send to BLM an application for each well. Each coalbed

methane well drilled within the area covered by the order must conform with approved well spacing. Drilling operations, stimulation of a coal seam, or surface disturbance preliminary to drilling may begin only after BLM approves the application.

§ 3172.5-2 What must I include when applying for authorization to drill a coalbed methane well or stimulate a coal seam?

You must send to BLM an original and two copies of your application. Include in it—

(a) A cover sheet containing the information specified in applicable notices or orders, including at least—

(1) The operator's name, address and telephone number;

(2) The name of the individual responsible for on-the-ground operations;

(3) The well name, number, location, and the total acreage committed to the well;

(4) The serial number assigned to the pooling order; and

(5) A statement certifying that you have the right to conduct the operations.

(b) A drilling plan containing the information specified in applicable notices or orders, including at least—

(1) A copy of an approved State permit to drill the well(s);

(2) A description of the drilling and casing program;

(3) A general discussion of the local geology;

(4) A discussion of how you will conform to any mine development plan near the proposed coalbed methane well; and

(5) An explanation of procedures you will follow to protect the safety of persons working in underground coal mines near the coalbed methane well.

(c) When proposed, a stimulation plan containing the information specified in applicable notices or orders. In it—

(1) Describe the stimulation procedure;

(2) Identify all parties who either are operating a coal mine or have by virtue of their property rights in the coal the ability to operate a coal mine within 750 horizontal feet and 100 vertical feet above and below the coal bearing stratum which you propose to stimulate;

(3) Certify that each party identified in § 3172.5-2(c)(2) received a stimulation plan and that the plan—

(i) Tells each notified party that it may witness stimulation activity;

(ii) Explains how you and the notified party will share information on the results of stimulation; and

(iii) States the notified party's right to ask for a hearing before BLM;

(4) Include a signed consent from each party identified in § 3172.5-2(c)(2)

agreeing to the proposed stimulation plan. The required consent to stimulate a coal seam in no way impairs, abridges, or affects any rights or obligations arising out of a coalbed methane contract or coalbed methane lease in existence as of October 24, 1992, between a coalbed methane operator or interest owner and a coal operator or interest owner. BLM considers a lease or contractual agreement allowing for coalbed methane development and any extensions or renewals of a lease or agreement as fully meeting consent requirements; and

(d) Provide any other data BLM may request.

§ 3172.5-3 What if I can't get signed consent from a party identified in § 3172.5-2(c)(2)?

(a) If all parties identified above haven't given signed consent, you must file a request with BLM for a determination whether to approve or deny the proposed stimulation of the coal seam(s) described in § 3172.5-2(c)(1). In your request—

(1) Say you lack written consent from a party from whom consent is required;

(2) Detail your efforts to obtain written consent;

(3) Offer any reasons you know for the lack of consent; and

(4) Give prima facie evidence that the method of stimulation proposed by the coalbed methane operator won't cause unreasonable loss or damage to the coal seam. For this section, prima facie evidence is evidence that proves a particular fact but might be overcome by other evidence that proves a contradictory fact. This evidence should consider all factors, including the possibility that coal seams for which no actual or proposed mining plans exists may be mined at some future date. This evidence should also take into consideration the economics of the coal industry and mine safety requirements.

(b) If a coal operator denies consent for reasons of safety, BLM seeks the views and recommendations of the appropriate State and Federal coal mine safety agencies. BLM then makes a determination which is in accordance with Federal and State coal mine safety laws and recommendations of Federal and State coal mine safety agencies.

Notice and Objection

§ 3172.6-1 As the unit operator, whom must I notify before I drill a coalbed methane well?

You must notify—

(a) All parties who either are operating a coal mine or have, by virtue of their property rights in the coal, the ability to operate a coal mine within 750

horizontal feet and 100 vertical feet above and below the coal-bearing stratum which you propose to stimulate; and

(b) All parties claiming an interest in the coalbed methane in the spacing unit.

§ 3172.6-2 How do I prove that I notified all appropriate parties?

You must send BLM a copy of—

(a) A signed receipt of delivery of notice by certified mail;

(b) A signed receipt acknowledging personal delivery of the notice; or

(c) The mailing log or other proof of the date you sent the notice by certified mail, return receipt requested, if all receipts of delivery of notice by certified mail haven't been signed and returned to you within 15 calendar days of mailing.

§ 3172.6-3 If I am notified of the application to drill a coalbed methane well, may I object to the drilling of the well?

Yes. You may submit to the BLM office where the application was filed your written objections about drilling the well within 30 calendar days after you receive a notice from the unit operator of the coalbed methane well.

§ 3172.6-4 What must I include in my objections to the application to drill a coalbed methane well?

Your objections to an application must contain—

(a) Your name, address and telephone number;

(b) The date you received notice of the application to drill;

(c) A description of the proposed activity you object to;

(d) A statement of the specific reason(s) you object;

(e) Conditions under which the permit would be acceptable; and

(f) Any other information you wish to provide including but not limited to mine maps, structural maps, mine plans, and stratigraphic information.

§ 3172.6-5 Under what circumstances may BLM refuse to approve the drilling of the well?

BLM may refuse to approve the drilling of the well if BLM determines that the proposed activity would—

(a) Cause unreasonable loss or damage to any operating, inactive or abandoned coal mine, including any coal mine already projected but not yet being operated, due to its proximity to any coal mine opening, shaft, underground workings, or to any proposed extension of the coal mine;

(b) Not conform with a coal operator's development plan for an existing or proposed operation;

(c) Interfere unreasonably with present or future coal mining

operations, including the ability to comply with other applicable laws and regulations;

(d) Possibly be unsafe, considering the dangers of creeps, squeezes or other disturbances because of the extraction of coal;

(e) Interfere unreasonably with the safe recovery of coal, oil, and gas; or

(f) Impinge directly upon the notified parties' coalbed methane interest.

§ 3172.6-6 Under what circumstances is BLM required to deny approval for the drilling of a well?

BLM must deny approval for the drilling of a well if BLM determines that—

(a) The well would not comply with applicable spacing or other requirements;

(b) The unit operator hasn't notified, or hasn't made a diligent effort to notify, all entities that claim ownership of coalbed methane to be drained by the well;

(c) The unit operator hasn't provided entities that claim ownership of coalbed methane to be drained by the well an opportunity to object in accordance with these rules; or

(d) Conflicting interests exist that haven't been resolved by voluntary agreement or by final determination by a court or other body of competent legal jurisdiction and BLM has not issued a pooling order.

§ 3172.6-7 If my application to drill a well is unacceptable because a notified party objects, may I modify my proposal to mitigate the objection?

Yes. BLM considers whether drilling is acceptable if you modify the proposed activity so that—

(a) You can reasonably drill through an existing or planned pillar of coal, or are close to an existing well, taking into consideration surface topography;

(b) You can instead move the drilling to a mined-out area, or to some other feasible area;

(c) You can agree to a drilling moratorium of not more than two years to complete coal mining operations in the subject area; or

(d) You can locate the spacing unit or well in a uniform pattern with other spacing units or wells.

Hearing and Decision on Objections to Drilling and Stimulation of Coalbed Methane Wells

§ 3172.7-1 If I have been notified of the proposal to drill or stimulate a coalbed methane well and I object, am I entitled to a formal hearing?

No. However, BLM may decide to hold an informal fact-finding hearing on any objection filed about an application

for drilling or stimulation, or both, of a coalbed methane well. In determining whether to have an informal hearing, BLM takes into account at least—

(a) Whether the party objecting to the application has standing to object. Only parties entitled to notice under § 3172.6-1 have standing;

(b) Whether the objection was filed on time; and

(c) Whether the objection contains all of the information required under § 3172.6-4.

§ 3172.7-2 May parties other than notified parties participate in these proceedings?

Yes. Other interested parties may comment on the stimulation plan only. You must submit comments in writing to the BLM office where the proposed plan was filed before the close of the objection period.

§ 3172.7-3 How will I find out about the informal hearing on objections to the drilling and/or stimulation of the well?

If BLM determines that a hearing is warranted, the hearing takes place within 30 calendar days after the close of the objection period. BLM notifies the applicant and each party with standing to object within ten calendar days after the objection period closes. The notice states the time and place of the hearing, all objections, and who made them.

§ 3172.7-4 What if BLM decides not to have a hearing on objections to the drilling and/or stimulation of the well?

If BLM decides not to hold a hearing on any objections filed with BLM, we explain why we are not holding a hearing in writing to the party who objects and the permit applicant and advise the objecting party of the right to appeal the decision.

§ 3172.7-5 When does BLM decide on my request for approval to drill and/or stimulate the coal seam?

Not later than 45 calendar days after receiving your request for approval to drill and/or stimulate, BLM—

(a) Approves your request as submitted or with appropriate modifications or conditions;

(b) Denies your request and advises you of the reasons for disapproval; or

(c) Advises you, either in writing or orally with later written confirmation, of the reasons why final action will be delayed along with the date you can expect the final action.

§ 3172.7-6 Do I need only BLM's approval to start operations?

No. Approval of drilling locations by BLM doesn't relieve you of obtaining the necessary permits from other appropriate State or Federal regulatory

authorities and surface managing agencies.

Plugging of Coalbed Methane Wells

§ 3172.8-1 When must I plug a coalbed methane well?

You must promptly plug and abandon each coalbed methane well that isn't commercially producible and not otherwise required for any other use. If the well you are abandoning—

(a) Penetrates a minable coal seam with remaining reserves, you must provide for safe mining later. When you abandon and plug a well, you must consult with BLM and any Federal or

State agencies with authority over coal mine safety; or

(b) Is associated with mined-out or unminable coal seams, you must consult with any Federal or State agencies with authority over coal mine safety.

Venting for Safety

§ 3172.9 May I vent coalbed methane for safety reasons?

Yes. Nothing in this section prevents or inhibits a party who has the right to develop and mine coal from venting coalbed methane to ensure safe mine operations in accordance with any

applicable Federal and State requirements.

Appeals

§ 3172.10 What if I have been adversely affected by a decision made by BLM under these regulations?

You may appeal that decision to the Interior Board of Land Appeals under the regulations in part 4 of this title.

Dated: July 17, 1995.

Sylvia V. Baca,

Acting Assistant Secretary of the Interior.

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